IN THE

Supreme Court of the United States

Term

No. 74-1427

THE COMMISSIONER OF REVENUE
OF THE STATE OF MINNESOTA
(Formerly Commissioner of Taxation),

Respondent,

vs.

REUBEN L. ANDERSON-CHERNE, INC.

Appellant.

ON APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

JURISDICTIONAL STATEMENT

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THE COMMISSIONER OF REVENUE
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REUBEN L. ANDERSON-CHERNE, INC.

Appellant.

ON APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

JURISDICTIONAL STATEMENT

(a) The Final Decree of the Minnesota Supreme Court appealed from is reported in 226 NW2, 611. The Minnesota citation is not yet available.

(b)

(i) The Appellant (The Relator in the State Court), a Minnesota corporation, in paying its taxes to the State of Minnesota for its fiscal years ending on March 31st, 1968, 1969 and 1970 included, as required by Chapter 290 Minnesota

Statutes, as taxable income interest on United States bonds in the following respective amounts: $23,179.00, $45,874.00 and $93,880.00.

Appellant petitioned the Respondent for his Order refunding to Appellant the following respective amounts: $2,512.85, $3,134.53 and $2,391.96 representing the dollar portion of the taxes it paid resulting from the inclusion in its returns for those respective years of the United States bond interest asserting that such income was immune, under Title 31, Section 742 U.S.C.A., from taxation by the state.

The Respondent by Order denied Appellant's Petition. The order denying was appealed to the State Tax Court which affirmed that Order. The Decision of the Tax Court was reviwed by the State Supreme Court by way of a Writ of Certiorari, and it sustained the Tax Court, and it is from that Decree of the Supreme Court that this appeal is taken.

This appeal is brought pursuant to U.S.C.A. Title 31 Section 1257 (2).

(ii) The Decree appealed from is dated February 14, 1975 on which date it was made and entered.

The Notice of Appeal was served on Louis Plutzer, Deputy Commissioner of Revenue, on the 21st day of April 1975, and, with Proof of Service attached, was filed with the Clerk of the Supreme Court of Minnesota on the 22nd day of April, 1975.

(iii) U.S.C.A. Title 31, Section 1257:

"Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

(iiii) *Richfield Oil Corporation vs. California*, 67 S.Ct. 156, 329 U. S. 69, 91 L. Ed. 80; *Society for Savings in City of Cleveland, Ohio vs. Bowers*, 75 S. Ct. 607, 349 U.S. 143, 99 L.Ed. 950; *Northwestern Mutual Life Insurance Co. vs. State of Wisconsin*, 48 S.Ct. 55, 275 U.S. 136, 72 L.Ed. 202.

M.S.A. 290.02

"An annual excise tax is hereby imposed upon every domestic corporation, except those included within Section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter."

M.S.A. 290.03.

"An annual tax for each taxable year, computed in the manner and at the rates hereinafter provided, is hereby imposed upon the taxable net income for such year of the following classes of taxpayers:

(1) Domestic and foreign corporations not taxable under section 290.02 which own property within this state or whose business within this state during the taxable year consists exclusively of foreign commerce, interstate commerce, or both:

Business within the state shall not be deemed to include transportation in interstate or foreign commerce, or both,

by means of ships navigating within or through waters which are made international for navigation purposes by any treaty or agreement to which the United States is a party;

(2) Resident and non-resident individuals;

(3) Estates of decedents, dying domiciled within or without this state; and,

(4) Trusts (except these taxable as corporations) however created by residents or non-residents or by domestic or foreign corporations."

M.S.A. 290.08

Subdivision 1.

"The following items shall not be included in gross income, provided that the amount of any item which was excluded in arriving at gross income under the provisions of section 290.01, subdivision 20, shall not be again excluded under this section."

Subdivision 7.

"Interest upon obligations of the State of Minnesota, any of its political or governmental subdivisions, any of its municipalities, or any of its governmental agencies or instrumentalities;"

Subdivision 8.

"Interest upon obligations of the United States, its possessions, its agencies, or its instrumentalities, so far as immune from state taxation under federal law;"

Subdivision 13.

"Subdivisions 4, 5, 10 and 11 shall not apply to corporations and subdivisions 7 and 8 shall not apply to corporations taxable under section 290.02 or under section 290.361."

(c)

(i) Does U.S.C.A. Title 31, Section 742 authorize the State of Minnesota to compel the inclusion of interest received on U. S. bonds in computing a tax imposed on a corporation under Section 290.02 Minnesota Statutes for the privilege of doing business as a corporation and which tax is computed solely on the income of the corporation?

(ii) Was the tax imposed by M.S.A. 290.02 on Appellant's privilege of existing and doing business as a corporation a property tax?

(iii) Or as stated by the Supreme Court of Minnesota:

"Does 31 U.S.C.A., Section 742 which forbids the state to include interest income on United States Government obligations in its computation of any tax other than a nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed upon corporations, forbid the inclusion of such income in a Minnesota corporations' net taxable income for the purpose of computing the so-called franchise tax imposed by Section 290.02?"

(d) A further statement of the case would be repetitious of the facts stated under (b) (i).

(e) Appellant asserts that any act which permits a state to impose a tax upon the receipt of interest on United States bonds reduces the number of prospective purchasers and the marketability of such bonds and is of substantial importance to the United States.

From the standpoint of the Appellant there is a loss with relation to the three tax years involved of the sum of $8,039.36, which is of substantial importance to the Appellant.

There is pending concurrently before the Tax Court the appeal of Anderson-Cherne Realty, Inc. for tax refunds for the same reason for the tax years ending March 31, 1969 and March 31, 1970 in the amount of $403.92 for the tax year ending March 31, 1969 and $406.75 for the tax year ending March 31, 1970.

On March 21, 1975 the Appellee filed a Deficiency Assessment against Appellant for $16,428.00 resulting from the failure of Appellant to include in its computation of taxes for the year ending March 31, 1971 interest received on United States securities. This matter has been appealed to the Tax Court and by consent of Counsel is to be held in abeyance waiting the result of the current appeal.

The total of the foregoing, is $25,278.03 and is substantial and important to Appellant.

(g) Copies of the Decrees of the State Supreme Court and of the Minnesota Tax Court are attached.

(j) Attached is a copy of the Notice of Appeal that was filed with the Clerk of the Minnesota Supreme Court on April 22, 1975.

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STATE OF MINNESOTA
TAX COURT

REUBEN L. ANDERSON-CHERNE, INC.,
Appellant,
vs.
THE COMMISSIONER OF TAXATION,
Appellee.

Docket Nos. 1737, 1738, 1739

ORDER ENTERED DECEMBER 20, 1973

This is an appeal from the Commissioner's Order denying refund claims by appellant for the fiscal years ending in 1968, 1969, and 1970. The issues for all three years are the same. For each year the taxpayer received interest income from United States Treasury notes and other obligations of the United States. The income from such securities was included in the income tax returns of appellant. The appellant then filed claims for refunds for each of the years in question, claiming the income therefrom to be not includable by reason of Minn. Stat. 290 and to be exempt under The Provisions of Title 31, U.S.C.A. Section 742.

Lewis L. Anderson appeared for appellant, as attorney, C. H. Luther, Deputy Attorney General, for appellee.

DECISION

The Commissioner's Order dated September 24, 1971, is hereby affirmed.

FINDINGS OF FACT

Duane M. Peterson

1. Appellant Reuben L. Anderson-Cherne, Inc. is a Minnesota corporation engaged in the business of mechanical contracting. Its principal office is in Minneapolis, Minnesota.

2. During the fiscal year ended March 31, 1968, appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of 22310.

3. During the fiscal year ended March 31, 1969, appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $45.874.

4. During the fiscal year ended March 31, 1970, appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $93,880.

5. Appellant filed tax returns with the Commissioner of Taxation of the State of Minnesota, pursuant to the provisions of Minn. Stat., Chapter 290, for each of its fiscal years ended March 31, 1968; March 31, 1969; and March 31, 1970. Copies of said returns are contained in the Commissioner of Taxation's Return filed with the Tax Court herein and are hereby incorporated herein by reference. The respective amounts of $22,310 for the 1968 taxable year, $45,874 for the 1969 taxable year, and $93,880 for the 1970 taxable year, as indicated in paragraphs 2, 3 and 4 in the foregoing, were included in appellant's taxable income in its Minnesota tax returns for those respective taxable years.

6. Under date of June 4, 1971, appellant filed claims for refund with respect to its taxable years ended March 31, 1968; March 31, 1969; and March 31, 1970; claiming that said amounts set forth in paragraphs 2, 3, and 4 are not includable in taxable income under Minn. Stat., Chapter 290, and are exempt from taxation by the State of Minnesota under the provisions of Title 31, Section 742, U.S.C.A., as amended. Copies of said claims for refund are contained in the Commissioner

of Taxation's Return filed with the Tax Court herein and are hereby incorporated herein by reference.

7. Under date of September 24, 1971, the Commissioner of Taxation issued its Orders denying appellant's claims for refund as described in paragraph 6, which Orders are the subject of these appeals. Copies of said Orders are contained in the Commissioner of Taxation's return filed with the Tax Court herein and are incorporated herein by reference.

CONCLUSIONS OF LAW

Interest income from United States Treasury notes is includable in the income of a corporation whose franchise tax under 290.02 is measured by its net income.

The briefs in this matter presented the Court with an excellent expose of the positions of the parties herein. It is seldom that the Court sees such succinct and accurate statements and citations. Both counsel are to be commended for their diligent work in presenting this case.

MEMORANDUM

1. Is the appellant taxable under Minn. Stat. 290.02 or 290.03?[1]

It is clear that the State may and does tax under Minn. Stat. 290.02 all domestic corporations not exclusively engaged in foreign or interstate commerce. Although the Stipulation does not allude to the kind of activity conducted by appellant, the return shows that the appellant is a domestic corporation doing mechanical contracting. It seems to the Court that in the absence of stipulated evidence to show that appellant is exclusively engaged in interstate or foreign commerce, the taxpayer has waived any claim to that statute.[1]

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[1] In the event appellant feels it can prove that it engages exclusively in interstate or foreign commerce, the Tax Court would be inclined to rule favorably on a motion to reopen this case to hear evidence on that point. See Rule XVI Tax Court Rules & Regulations.

2. Is the tax on income of a corporation under Minn. Stat. 290.02 a property tax or an excise tax?

The Supreme Court has clearly ruled in cases interpreting the law, as it existed prior to 1947, that the franchise tax of Minn. Stat. 290.02 is a property tax and not an excise tax. *State vs. Duluth, Missabe & Northern Railway Co.*, 207 Minn. 618, 292 N.W. 401; *Pullman Co. vs. Commissioner of Taxation*, 223 Minn. 96, 25 N.W. (2d) 838; *Bemis Bros. Bag Co. vs. Wallace*, 197 Minn. 216, 266 N.W. 690; and *State vs. Duluth G. & W. Co.*, 76 Minn. 103, 78 N.W. 1032.

In the case of *Western Union Telegraph Co. vs. Spaeth*, 232 Minn. 128, 44 N.W. (2d) 440, the Court noted that the legislature had not changed the statute which had been construed by the above decisions until 1947. (In 1947 the legislature added the word "excise" to describe the annual tax.) The Supreme Court in the Western Union case refused to treat the 1941, 1942, and 1943 taxes as excise, saying that to do so would be to give retroactive effect to the 1947 Statutory Amendment.

This Court is not impressed with the method used by the legislature to change the tax from a property tax to an excise tax. It seems to us that if the language of the statute imposed a tax on the "property" of the "privilege of doing business" prior to the Amendment, it still imposes the same type of tax in spite of the addition of the word "excise" to the statute. We are, however, constrained by the language of the Western Union case to believe that the Supreme Court will interpret the modification to mean that the legislative intent is now clear that Minn. Stat. 290.02 is an excise tax, and that the legislature can make it an excise merely by saying so. We, therefore, hold that Minn. Stat. 290.02 is an excise tax and not a property tax.

3. Is interest on Federal Government bonds exempt income

in the determination of appellant's tax liability by virtue of 31 U.S. Code 742 and/or Minn. Stat. 290.08?

It clearly appears that the deductibility of Federal Securities interest under Minn. Stat. 290.08 does not apply to domestic corporations taxable under Minn. Stat. 290.02—See Minn. Stat. 290.08, Subd. 13.

The question there is whether or not the tax imposed by Minn. Stat. 290.02 is a nondiscriminatory franchise tax which is excepted from the exemption from State taxes decreed by 31 U.S. Code 742 . . .

> Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory franchise *or other nonproperty taxes in lieu thereof imposed on corporations* and except estate . . . (Emphasis supplied.)

Neither the Court nor either counsel have been able to find a case directly in point on this question. The State's position is that an "income tax" which is called a "franchise tax" is a "nondiscriminatory franchise tax". One could easily agree that it is nondiscriminatory in that it is not an attempt to circumvent the tax exempt status of Federal Securities and that it treats all corporations equally. The practice, however, of legislative labeling of a tax as one thing while its plain meaning is something different seems to invite judicial disapproval. Our Court has, however, clearly approved the practice in *Duluth-Superior Dredging Co. vs. Commissioner of Taxation*, B.T.A., Docket 251, April 11, 1946, in language which stated:

As pointed out by the Commissioner, Taxpayer is not being taxed on its income, which includes this interest, but under Section 2 is taxed upon the exercise of its franchise measured by its net income.

The Federal case of *Northwestern Mutual Life Ins. Co. vs. Wisconsin*, 275 U.S. 136, 48 S.Ct. 55, 72 L.Ed. 202 (1927), held that the taxation of Federal Securities income was contrary to 31 U.S.C.A. 742.

A later case, however, of *Werner Machine Co. vs. New Jersey*, 350 U.S. 492, 76 S.Ct. 534, sustained a New Jersey franchise tax based on the corporation's net worth, which included the value of certain Federal bonds. This apparently reflects the 1959 Amendment of 31 U.S.C.A. 742, when the exception of nondiscriminatory franchise taxes was added.

We must, therefore, conclude that the Federal Securities income in this case is includable in taxpayer's income.

MINNESOTA TAX COURT

Duane M. Peterson

John Knapp

Mr. Earl B. Gustafson did not participate in this decision.

No. 279, Tax Court, Knutson, J.

REUBEN L. ANDERSON-CHERNE, INC.,

Relator,

44816 vs.

COMMISSIONER OF TAXATION OF THE STATE OF MINNESOTA,

Respondent.

Endorsed
Filed February 14, 1975
John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

Corporate Franchise tax imposed by Minn. St. 1971, § 290.02, which utilizes net income as a measuring stick for determining the value of exercising the corporate franchise in the State of Minnesota and which permits the inclusion of interest income on United States government obligations in the computation of net income, does not violate 31 USCA, § 742, which forbids the states to consider interest on such obligations in the computation of any tax other than a nondiscriminatory corporate franchise tax or other nonproperty tax imposed in lieu thereof.

Affirmed.

Heard before Otis, Kelly, Todd, Yetka, and Knutson, JJ., and considered and decided by the court en banc.

OPINION

KNUTSON, Justice.*

* Retired Chief Justice acting pursuant to Minn. St. 2.724.

Certiorari on the relation of Reuben L. Anderson-Cherne, Inc., to review an order of the Minnesota Tax Court denying relator's application for a refund of taxes paid pursuant to Minn. St. 1971, § 290.02, for the years 1968, 1969, and 1970.

The following facts have been stipulated:

"I

"Appellant Reuben L. Anderson-Cherne, Inc. is a Minnesota corporation engaged in the business of mechanical contracting. Its principal office is in Minneapolis, Minnesota.

"II

"During the fiscal year ended March 31, 1968, Appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $22,310.

"III

"During the fiscal year ended March 31, 1969, Appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $45,874.

"IV

"During the fiscal year ended March 31, 1970, Appellant received interest income from United States Treasury notes and other obligations of the United States in the amount of $93,880.

"V

"Appellant filed tax returns with the Commissioner of Taxation of the State of Minnesota, pursuant to the provisions of Minn. St., Chapter 290, for each of its fiscal years ended March 31, 1968, March 31, 1969, and March 31, 1970. Copies of said returns are contained in the Commissioner of Taxation's Return filed with the Tax Court

herein and are hereby incorporated herein by reference. The respective amounts of $22,310 for the 1968 taxable year, $45,874 for the 1969 taxable year, and $93,880 for the 1970 taxable year, as indicated in paragraphs II, III and IV above, were included in Appellant's taxable income in its Minnesota tax returns for those respective taxable years.

"IV

"Under date of June 4, 1971, Appellant filed claims for refund with respect to its taxable years ended March 31, 1968, March 31, 1969, and March 31, 1970, claiming that said amounts set forth in paragraphs II, III and IV above are not includible in taxable income under Minn. St., Chapter 290, and are exempt from taxation by the State of Minnesota under the provisions of Title 31, Sec. 742, U.S.C.A. as amended. * * *"

Minn. St. 1971, § 290.02, reads:

"An annual excise tax is hereby imposed upon every domestic corporation, except those included within section 290.03, for the privilege of existing as a corporation during any part of its taxable year, and upon every foreign corporation, except those included within section 290.03, for the grant to it of the privilege of transacting or for the actual transaction by it of any local business within this state during any part of its taxable year, in corporate or organized form.

"The tax so imposed shall be measured by such corporations' taxable net income for the taxable year for which the tax is imposed, and computed in the manner and at the rates provided in this chapter."

It is relator's contention that its income from interest on United States government securities cannot be included in de-

termining net income for the purpose of computing the taxes imposed under § 290.02. The interest from Federal securities is exempt from our state income tax under Minn. St. 290.08, subd. 8. It is also exempt from Federal taxation under 31 USCA, § 742, unless it comes within the exception found in that statutory provision.

The only question before us in this case may be stated as follows: Does 31 USCA, § 742, which forbids the state to include interest income on United States government obligations in its computation of any tax other than nondiscriminatory franchise or other non-property taxes in lieu thereof imposed upon corporations, forbid the inclusion of such income in a Minnesota corporation's net taxable income for the purpose of computing the so-called franchise tax imposed by § 290.02?

The governing Federal statute, 31 USCA, § 742, reads:

> "Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority. This exemption extends to every form of taxation that would require that either the obligations or the interest thereon, or both, be considered, directly or indirectly, in the computation of the tax, except nondiscriminatory franchise or other nonproperty taxes in lieu thereof imposed on corporations and except estate taxes or inheritance taxes."

The relator does not contend that the tax imposed by Minn. St. 1971, § 290.02, is discriminatory but contends that it is an income or property tax rather than a franchise tax.

The Tax Court held that income from interest on Federal securities was includable in the net income of a corporation for the purpose of determining the amount of tax due under § 290.02. It said in part:

> "* * * The State's position is that an 'income tax' which is called a 'franchise tax' is a 'nondiscriminatory franchise tax'. One could easily agree that it is nondiscriminatory in that it is not an attempt to circumvent the tax exempt status of Federal Securities and that it treats all corporations equally. The practice, however, of legislative labeling of a tax as one thing while its plain meaning is something different seems to invite judicial disapproval. Our Court has, however, clearly approved the practice in Duluth-Superior Dredging Co. vs. Commissioner of Taxation, B.T.A., Docket 251, April 11, 1946 * * *.
>
> * * *
>
> "The Federal case of Northwestern Mutual Life Ins. Co., vs. Wisconsin 275 U. S. 136, 48 S. Ct. 55, 72 L. Ed. 202 (1927), held that the taxation of Federal Securities income was contrary to 31 U.S.C.A. 742.
>
> "A later case, however, of Werner Machine Co. vs. New Jersey, 350 U. S. 492, 76 S. Ct. 534, sustained a New Jersey franchise tax based on the corporation's net worth, which included the value of certain Federal bonds. This apparently reflects the 1959 Amendment of 31 U.S.C.A. 742, when the exception of nondiscriminatory franchise taxes was added.
>
> "We must, therefore, conclude that the Federal Securities income in this case is includable in taxpayer's income."

Relator relies on *State v. Duluth, M. N. Ry. Co.*, 207 Minn. 618, 292 N. W. 401 (1939), certiorari denied, 311 U. S. 719, 61 S.Ct. 439, 85 L.Ed. 468 (1941); *The Pullman Co. v. Commr. of Taxation*, 223 Minn. 96, 25 N. W. 2d 838 (1947); and *Milwaukee Motor Transp. Co. v. Commr. of Taxation*, 292 Minn. 66, 193 N. W. 2d 605 (1971).

It is true that in the first two cited cases we held that the tax imposed was a property tax. However, these cases are not controlling here. They considered the statute prior to 1947, when the legislature amended Minn. St. 1945, § 290.02, to provide that the tax was an excise tax. See, *Western Union Tel. Co. v. Spaeth*, 232 Minn. 128, 44 N. W. 2d 440 (1950). The case of *The Pullman Co. v. Commr. of Taxation, supra*, contains a persuasive dissent by three members of the court as then composed in which the difference between a franchise tax and a property tax is clearly stated in the following language:

> "There can be no doubt that a state may impose constitutionally upon a foreign corporation engaged in interstate and intrastate transportation a tax for the privilege of carrying on the intrastate business measured by a percentage of the income therefrom, even though the carrier uses the same instrumentalities and employes in conducting both kinds of commerce and pays a state ad valorem tax on those instrumentalities. [Citations omitted.] The two taxes relate to distinct and different subjects. The subject of an ad valorem tax is property, and that of an excise tax is a right or privilege." 223 Minn. 110, 25 N. W. 2d 846.

In the Milwaukee Motor case, we did refer to the tax somewhat interchangeably as a franchise and income tax. The nature of the tax was not an issue in that case; the only question was whether the two corporations involved were one and the same rather than two separate corporations. While we may have referred to the tax as an income tax rather imprecisely, what we were dealing with was the franchise tax and not an

income tax. Relator has cited us no case holding directly that the tax under § 290.02 is an income tax.[1]

The United States Supreme Court has stated the general rule that a tax is a franchise tax rather than an income tax if it requires that the earning of the income and the exercising of the privilege of doing business in corporate form coincide before imposing tax liability. See, *Educational Films Corp. v. Ward*, 282 U. S. 379, 51 S.Ct. 170, 75 L.Ed. 400, 71 A. L. R. 1226 (1931); *Flint v. Stone Tracy Co.*, 220 U. S. 107, 31 S.C. 342, 55 L.Ed. 389 (1911).

The controlling Federal statute, 31 USCA, § 742, was amended in 1959 so as to include the language now found in it which permits the inclusion of income on Federal obligations for the purpose of determining the amount of a nondiscriminatory franchise tax. Prior to the amendment the statute read: "Except as otherwise provided by law, all stocks, bonds, Treasury notes, and other obligations of the United States, shall be exempt from taxation by or under State or municipal or local authority."

If the contention of relator is tenable, the amendment of the Federal act so as to permit the inclusion of income from Federal obligations in determining the amount of "nondiscriminatory franchise or other nonproperty taxes" would be completely meaningless.

Without going into a lengthy discussion on the subject, we are convinced that the Tax Court correctly held that the tax involved in this case is not levied on the income from interest on government securities as such, but was, in fact, a franchise

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[1] We note that the legislature, in L. 1974, c. 556, § 18, amended Minn. St. 1971, § 290.02, by striking the word "excise" and inserting the word "income" to describe the tax imposed by § 290.02. Whatever the effect of the amendment may be, as to which we express no opinion, it is not applicable to this case.

tax imposed upon the privilege of operating as a corporation. The inclusion of interest on Federal securities in determining net income of the corporation is used only as a measuring stick to compute the amount of a franchise tax due under Minn. St. 1971, § 290.02. As such, it is permissible under 31 USCA, § 742.

Affirmed.

44816

STATE OF MINNESOTA
IN SUPREME COURT

THE COMMISSIONER OF REVENUE OF
THE STATE OF MINNESOTA
(Formerly Commissioner of Taxation),

Respondent,

vs.

REUBEN L. ANDERSON-CHERNE, INC.,

Relator.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Reuben L. Anderson-Cherne, Inc., the Relator above named hereby appeals to the Supreme Court of the United States from the Final Decree of the Supreme Court of the State of Minnesota entered in this matter on February 14, 1975 affirming the Order of the Tax Court of the State of Minnesota sustaining the refusal of the Respondent to refund to Relator that portion of Relator's taxes which it had paid to the State of Minnesota for the tax years ending March 31, 1968, 1969 and 1970 based upon interest Relator had received on United States bonds.

This appeal is taken pursuant to 28 U.S.C.A. 1257 (2).

II. The Clerk will please prepare a transcript of the record in the cause for transmission to the Clerk of the Supreme Court and include in said transcript the following:

(a) The return of the Respondent, Commissioner of Taxation, to the Tax Court and which was included in the record of that Court certified to the above Court:

(b) The stipulation of facts by Counsel for the parties dated the 13th day of December, 1971;

(c) Relator's Brief and Appendix;

(d) Respondent's Brief;

(e) Copy of the Court's Decree filed and entered on February 14, 1975.

III. The following questions are presented by this appeal:

Does U.S.C.A. Title 31, Section 742 Authorize the State of Minnesota to compel the inclusion of interest received on United States bonds in computing a tax imposed on a corporation for the privilege of doing business as a corporation and which tax is computed solely on the income of the corporation?

Was the tax imposed by Minnesota Statutes Chapter 290 on Appellant's privilege of existing as and doing business as a corporation a property tax?

Does the tax imposed on corporations by M.S.A. 290.02 discriminate against said corporations as compared to the tax imposed on corporations by M.S.A. 290.03?

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